

Message Text

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ACTION EUR-25

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TAGS: PGOV, WB

SUBJECT: PRESS REPORTS ALLIES HAVE AGAIN REJECTED BERLIN CONSTITUTIONAL COURT

1. "TAGESSPIEGEL" CARRIED ESSENTIALLY ACCURATE REPORT AUGUST 10 THAT ALLIES HAD REJECTED PROPOSAL FOR ESTABLISHMENT OF COURT TO CONSIDER COMPATIBILITY OF BERLIN LEGISLATION WITH BERLIN CONSTITUTION. PAPER DESCRIBED PROPOSAL AS HAVING BEEN DEVELOPED BY SENAT IN COOPERATION WITH THREE POLITICAL PARTIES IN EFFORT TO FULFILL PROVISION OF BERLIN CONSTITUTION WHICH SPECIFIES THAT BERLIN IS TO HAVE CONSTITUTIONAL COURT. "TAGESSPIEGEL" SAID NEGATIVE ALLIED RESPONSE TO PROPOSAL WAS CONVEYED ORALLY INSTEAD OF IN NORMAL WRITTEN FASHION AND SUGGESTED THAT REASON FOR REJECTION WAS DIFFERENCE OF OPINION BETWEEN ALLIES AND GERMAN SIDE ON WHETHER FRG LEGISLATION APPLIED IN BERLIN AFTER ADOPTION BY HOUSE OF REPRESENTATIVES IS BERLIN OR FRG LEGISLATION. PAPER INDICATED THAT SENAT AND PARTIES WERE UNLIKELY TO PRESS ISSUE FURTHER.

2. SENAT IS REFUSING COMMENT UNTIL AFTER GOVERNING MAYOR RETURNS FROM VACATION (LAST WEEK IN AUGUST) AND
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HAS OPPORTUNITY TO BRIEF THREE FRAKTIONS ON ALLIED

RESPONSE, WHICH ACTUALLY WAS MADE IN LATE MAY. MISSIONS HAVE AGREED ON FOLLOWING RESPONSE TO PRESS INQUIRIES (WE HAVE RECEIVED ONE): "THE TOPIC IS, AS THE NEWS-STORIES HAVE NOTED, A VERY OLD ONE. SINCE IT INVOLVES DISCUSSION IN CONFIDENCE BETWEEN THE ALLIES AND THE SENAT I DON'T BELIEVE IT WOULD BE USEFUL TO DISCUSS THE STORIES IN DETAIL. IT SHOULD BE SUFFICIENT TO NOTE THAT THE ALLIES HAVE RESPONDED TO THE SENAT'S INQUIRIES. NO SPECIAL IMPORTANCE NEED BE ATTACHED TO THE FORM OF THE REPLY WHICH WAS, IN FACT, AGREED BEFOREHAND WITH THE SENAT."

3. COMMENT: LOCAL CONSTITUTIONAL COURT IS OLD CHESTNUT WHICH SENAT HAS FELT CONSTRAINED TO PUT TO USE FROM TIME TO TIME. CREATION OF SUCH A COURT IS, AS SENAT HAS MADE CLEAR, OF INTEREST ONLY TO PARTY OUT OF POWER WHICH MIGHT WISH TO USE IT AS FORUM TO CHALLENGE LAWS PASSED BY GOVERNMENT. GOVERNING MAYOR TOLD US MONTHS AGO HE WOULD BE HAPPY WITH NEGATIVE REPLY. LESS THAN HALF FRG LAENDER HAVE SUCH COURTS, AND THOSE THAT EXIST HAVE LITTLE WORK. ALLIES HAVE BEEN CONSISTENTLY NEGATIVE ON CREATION OF COURT BECAUSE OF DIFFICULTIES IT WOULD POSE FOR ALLIED LEGAL POSITION ON RELATIONSHIP OF BERLIN TO FRG. SUCH A COURT WOULD EITHER HAVE TO DEAL WITH ALL BERLIN LEGISLATION, INCLUDING THAT PASSED IN BONN AND ADOPTED HERE BY MANTELGESETZ AND THUS CREATE POSSIBILITY THAT LAWS THAT REMAINED VALID IN FRG WOULD BE DECLARED UNCONSTITUTIONAL IN BERLIN, OR IT WOULD DISTINGUISH BETWEEN LAWS ORIGINATING IN BONN AND THOSE ORIGINATING IN BERLIN AND THUS DO VIOLENCE TO ALLIED POSITION THAT ALL BERLIN LAW IS LOCAL LAW AND FRG DOES NOT EXERCISE DIRECT GOVERNMENTAL AUTHORITY. (EXPLANATORY LEGAL COMMITTEE MEMORANDUM WAS POUCHED TO EUR/CE LAST WEEK).

4. TAGESSPIEGEL STORY WAS NO DOUBT LEAKED BY SENAT SOURCES WHO WISHED TO MAKE CLEAR TO OPPOSITION PARTIES THAT ALLIES AND NOT SPD BEAR RESPONSIBILITY FOR REJECTION. WE DOUBT ISSUE WILL BE CARRIED MUCH FURTHER AT PRESENT TIME, BUT SENAT ASKED THAT ALLIED REPLY BE ORAL SO THAT IT WOULD RETAIN GREATER FLEXIBILITY EITHER TO RAISE ISSUE LIMITED OFFICIAL USE

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AGAIN OR SEEK TO DO AWAY WITH IT FOR GOOD BY AMENDING BERLIN CONSTITUTION TO DELETE PROVISION ARTICLE WHICH ENVISAGES CREATION OF COURT. END COMMENT.KELIN

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